

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Application of
International Paper Company for
a Variance from the Standard
Horizontal Clearance at Its Facility
Located at 1300 Red Fox Road,
Arden Hills, Minnesota

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on May 7, 1996, in South St. Paul.

Appearing on behalf of the Applicant, International Paper Company, was Joe Dieffenbacher, Chief Engineer, U.S. Container Division, International Paper Company. Appearing on behalf of other interested groups were George Clegg, Jr., United Transportation Union; and Chuck Anderson, CP Rail. Appearing on behalf of the staff of the Transportation Regulation Board and Mn/DOT was Ron Mattson. The hearing lasted less than one hour, and the record closed at the end of the hearing.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, the Rules of the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUE

Has the Applicant demonstrated that the statutory tests have been met so as to allow the Board to grant a variance from the horizontal clearance requirements of Minn. Stat. § 219.47 (1994)?

Based upon all of the files and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. International Paper's U. S. Container Division makes corrugated shipping containers at a facility located on Red Fox Road in Arden Hills, Minnesota.

2. The principal raw material for the production is Kraft paper, which arrives in rolls weighing between 4,000 and 8,000 pounds each. These rolls are delivered to the Arden Hills facility by CP Rail, which delivers 300 tons of rolls each day. It takes six rail cars to deliver that much paper, and CP Rail makes one switch per day into the Arden Hills facility.

3. The current capacity of the Arden Hills plant is more than 300 tons per day, but its actual productivity ranges between 270 and 280 tons per day. Approximately two years ago, International Paper decided to expand the Arden Hills facility to a maximum capacity of 400 tons per day. This will require a roughly 60,000 square-foot addition to the plant and an additional two rail cars per day of Kraft paper deliveries.

4. In order to maintain the one switch per day, it would mean that eight cars would have to be switched into the facility each day, rather than the current six cars. The facility's current unloading area is totally heated and enclosed, and all six cars fit in there at once. The expansion will involve extending the existing unloading area approximately 120 feet to the east so that it will hold eight cars.

5. Since the facility was first built, the size and weight of the Kraft paper rolls has increased. Rolls used to weigh 6,000 pounds, but now they weigh 8,000 pounds. That increase has required larger roll clamp trucks to carry the heavier rolls, as well as larger counter-balances on the trucks. These larger trucks are harder to maneuver than smaller ones, and increased maneuverability is one of the needs for the variance sought in this Application. Employees have raised safety concerns about maneuvering the larger trucks on the dock plates which are placed between the edge of the dock and the edge of the rail cars. The United Paperworkers International Union, Local 264, fully supports granting a variance which would bring the rail dock closer to the rail car, permitting the drivers to unload the rolls with minimal maneuvering on the dock plate. Ex. 5. Most loading and unloading would take place between the railroad car and the south dock area. The proposed variance would, therefore, reduce the maneuvering of the roll clamp trucks on the dock plate, achieving the goal of improving worker safety for the workers unloading the rolls.

6. The existing rail spur between the company's facility and the main line runs in a generally north-to-south direction. However, after it proceeds from the main line to the

company's facility in a generally northerly direction, it begins to curve to the west even before it reaches the company's property line. That curve continues once the track enters the company's property and by the time the spur ends inside the company's facility, a 90-degree turn has occurred. The unloading area encloses a part of the track which is straight east and west, as well as a part of the track which is still curving as it enters the unloading area. For purposes of convenience, the following discussion will refer to the "north side" of the track and the "south side" of the track, as those were the terms used at the hearing, but from a technical standpoint, those terms are not perfectly correct because for at least a portion of the unloading area, the track does not run in a straight east-west direction. The track enters the building on the east side and extends for roughly four-fifths of the width of the building before it terminates in a set bumper.

7. It is proposed that the horizontal clearance between the edge of the south dock and the center line of the track be six feet, six inches. On the north side, the horizontal clearance would be the full eight feet, six inches. Without the variance, the distance between the center line and the south dock would have to be ten feet, six inches. This is greater than the statutory eight feet, six inches because the railroad also must follow A. R. E. A. standards, which require additional horizontal clearances for curving tracks. See, Ex. 1, p. 6, note 22.

8. The doorway where the track enters the enclosed area has a 15-foot horizontal width and a 22-foot vertical height. It, like the proposed track and dock area, has an eight-foot six-inch horizontal clearance on the north side of the track, but only a six-foot six-inch clearance on the south side of the track. Switching presently occurs in the late afternoon, and that is expected to continue. The railroad intends to light the doorway area. It has agreed to place a standard "no-clearance" sign on the south side of the doorway, facing east, so as to warn trainmen of the clearance problem. This sign is depicted in Ex. 4. In addition, the railroad has agreed with the union to place a "no-clearance" indication on a stop sign which the railroad will erect approximately 150 feet from the entrance.

9. All car movements are made by CP Rail employees; none are made by International Paper employees. The UTU, which is concerned about the safety of its members, believes that the variance would not threaten the safety of its members so long as certain precautions are taken.

10. Concerns raised by the UTU related to a clear walkway or "aisle" on the south dock so that rail workers could walk along the dock to inspect rail cars prior to moving them. The applicant agreed to this. The union was also concerned that all car doors be closed and secured before being released for rail movement. The applicant agreed to that. The union was also concerned that ladders or stairwells or similar facilities be in place which would allow rail workers to climb from the ground level to the dock level on both the north and south sides of the track. The applicant agreed to this as well. The applicant has met all of the concerns raised by the union and the union has reached an understanding with the applicant so that the UTU does not oppose the application.

11. The Application was filed with the Board on March 11, 1996. On March 29, 1996, and weekly thereafter, the Board published notice of this hearing in its weekly

calendar. The Board also mailed copies of the notice to interested persons, including unions for both railroad employees and company employees.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.

2. The Board gave proper notice of the hearing and has fulfilled all procedural requirements of law or rule so that the matter is properly before the Administrative Law Judge.

3. Extending the enclosure from its current configuration to the proposed configuration will result in a horizontal clearance violation on the south side of the track's center.

4. Compliance with the statutory horizontal clearance requirements would be unreasonable because it would endanger International Paper's employees who are required to unload paper rolls from the rail cars.

5. The horizontal encroachment discussed in the Findings will not create a condition unduly hazardous to any person or the employees of the railroad, so long as appropriate no-clearance signs and lighting are installed. A post-construction inspection of the signage, the lighting, and other features discussed above will assure that the agreements reached at the hearing will, in fact, be carried out.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY, WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

It is the Recommendation of the Administrative Law Judge to the Board that it issue the following:

ORDER

IT IS HEREBY ORDERED that the Petition of International Paper Company for a variance from the statutory horizontal clearance requirements for encroachments described above at its Arden Hills facility is GRANTED, contingent upon compliance with the following requirements:

1. The petitioner shall install warning signs showing a lack of horizontal clearance at the rail entry doorway.

2. Petitioner shall provide adequate lighting for the no-clearance sign which shall be kept continuously illuminated during the hours of darkness.

3. Petitioner shall notify the Transportation Regulation Board upon completion of the installation of the signs and lighting for the purpose of inspection.

Dated this 10th of May, 1996.

s/ Allan W. Klein

ALLAN W. KLEIN

Administrative Law Judge

Reported: Tape Recorded; no transcript prepared.

NOTICE

Under to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

May 10, 1996

Richard Helgeson, Chairman
MN Transportation Regulation Board
254 Livestock Exchange Building
100 Stockyards Road
South St. Paul, MN 55075

RE: In the Matter of the Application of International Paper Company for
a Variance from the Standard Horizontal Clearance at Its Facility Located
at 1300 Red Fox Road, Arden Hills, Minnesota; OAH Docket No. 6-3001-
10462-2

Dear Chairman Helgeson

Enclosed herewith and served upon you by mail is the Administrative Law
Judge's Findings of Fact, Conclusions and Recommendation in the above-entitled
matter. Also enclosed is the official record, with the exception of the tape recording of
the hearing. If you would like a copy of those tapes, please contact our office in writing
or telephone 341-7642. Our file in this matter is now being closed.

Yours very truly,

ALLAN W. KLEIN
Administrative Law Judge
Telephone: 612/341-7609

AWK:lr
Enclosures
cc: Joe Dieffenbacher
George Clegg, Jr.
Chuck Anderson
Ron Mattson

STATE OF MINNESOTA))
COUNTY OF HENNEPIN) SS

AFFIDAVIT OF SERVICE BY U.S. MAIL

LaVon Regan, being first duly sworn, hereby deposes and says that on the 10th of May, 1996, at the City of Minneapolis, county and state aforementioned, she served the attached FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE; Docket No. 6-3001-10462-2, by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with first class postage prepaid and addressed to the individuals named herein.

Richard Helgeson, Chairman
MN Transportation Regulation Board
254 Livestock Exchange Building
100 Stockyards Road
South St. Paul, MN 55075

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U.S. Container Division
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6400 Poplar Avenue 10-057
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Ronald F. Mattson, Mn/DOT
Office of Railroads & Waterways
925 Kelly Annex
395 John Ireland Boulevard
St. Paul, MN 55155

LaVon Regan

Subscribed and sworn to before me
this 10th day of May, 1996.

Notary Public